

REMARKS

The present communication is responsive to the Office Action mailed May 18, 2006.

Claim Objections

Claims 4 and 5 have been amended to correctly depend on claim 1.

Double Patenting

The Examiner rejects claims 1, 25, 35 and 51-53 under the doctrine of non-statutory double patenting, over claims 1 and 9 of US Patent No. 6,332,165. The Examiner also rejects claims 1, 25, 35 and 51-53 under the doctrine of non-statutory double patenting, over claims 1 and 9 of US Patent No. 6,351,795. Applicant respectfully traverses.

In making the rejection, the Examiner states that “Although the conflicting claims are not identical, they are not patentably distinct from each other because they are both directed to start a local transaction before starting a global transaction. Clearly, the Examiner is focusing on the alleged similarities between the allegedly conflict claims, and the Examiner does not consider the differences at all.

By contrast, as discussed in MPEP 804 (“Definition of Double Patenting”), *emphasis added*:

Any obviousness-type double patenting rejection should make clear:

(A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and

(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim at issue would have been an obvious variation of the invention defined in a claim in the patent.

Here, the Examiner has not even begun to meet the burden of an obvious-type double patenting rejection. For example, even taking as true the Examiner’s statement that “both are directed to start a local transaction before starting a global transaction” (a statement with which Applicant does not necessarily agree), the Examiner has not addressed any of the differences. As just one example, the Examiner has not addressed why the element of “completing both the local transaction and the global transaction substantially atomically using a last resource 2-phase commit optimization” would be an obvious variation. This is just one example, and, if the Examiner sets forth a proper prima facie case of obviousness-type double patenting, addressing all the differences and why those differences are alleged to be obvious, then Applicant will be happy to address those differences and obviousness allegations at that time.

Section 112 and 101 Rejections, Claims 40 and 53

Claim 53 has been amended to clarify that the recited computer code is “for causing the computer to ...”

The computer readable medium, as recited in claims 40 and 53, is disclosed, for example, at page 21 of Applicant’s specification as filed:

As is well known in the art, ROM acts to transfer data and instructions uni-directionally to the CPUs 1032, while RAM is used typically to transfer data and instructions in a bi-directional manner. CPUs 1032 may generally include any number of processors. Both primary storage devices 1034, 1036 may include any suitable computer-readable media. A secondary storage medium 1038, which is typically a mass memory device, is also coupled bi-directionally to CPUs 1032 and provides additional data storage capacity. The mass memory device 1038 is a computer-readable medium that may be used to store programs including computer code, data, and the like. Typically, mass memory device 1038 is a storage medium such as a hard disk, a tape, an optical disk, a floppy disk, or a computer disk read only memory (CD-ROM) which is generally slower than primary storage devices 1034, 1036. Mass memory storage device 1038 may take the form of a magnetic or paper tape reader or some other well-known device. It will be appreciated that the information retained within the mass memory device 1038, may, in appropriate cases, be incorporated in standard fashion as part of RAM 1036 as virtual memory. A specific primary storage device 1034 such as a CD-ROM may also pass data uni-directionally to the CPUs 1032.

As for the section 101 rejection, Applicant notes that the “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” state:

These interim guidelines propose that such signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of § 101. Public comment is sought for further evaluation of this question.

Given even the PTO’s indecisiveness on this issue, Applicant respectfully traverses the 101 rejection on the basis that (as stated in the Interim Guidelines):

... a signal encoded with functional descriptive material is similar to a computer-readable memory encoded with functional descriptive material, in that they both create a functional interrelationship with a computer. In other words, a computer is able to execute the encoded functions, regardless of whether the format is a disk or a signal.

Anticipation Rejection

Claims 51-53 are rejected as being anticipated by Raz. An anticipation rejection is improper if the cited reference does not disclose each and every feature recited in the rejected claims. It is respectfully submitted that Raz does not disclose at least the feature of “initiating the transaction as a local transaction on the first resource manager without knowledge of whether the transaction is more appropriate to be a local transaction or a global transaction.”

More particularly, the Examiner states:

Raz discloses, “each transaction should be assumed to be a global, but in this case any optimization of the local concurrency control for local transaction is lost. When an optimistic local concurrency control is used, for example, knowledge that a transaction is

local can be used any time before the transaction is decided” (Raz, col.22, lines 14-19). In addition, Raz discloses, “the transaction scheduler eventually transfer execution to the transaction, and the transaction is executed until either it becomes inhibited or it becomes ready” (Raz, col. 22, lines 26-29). Hence, Raz teaches of executing the transaction as a local transaction immediately without deciding if it should be a local or a global transaction.”

Contrary to the Examiner’s contention, this cited passage recites assuming that a transaction is global and, only when knowledge is gained that a transaction is local is the transaction initiated as a local transaction. This is clear from the statement “each transaction should be assumed to be global.” To the contrary, as recited in Applicant’s claim 51, each transaction is assumed to be local (even “without knowledge of whether the transaction is more appropriate to be a local transaction or a global transaction”). Thus, the cited portion of Raz in fact supports the patentability of Applicant’s claimed subject matter, and does not support the unpatentability of Applicant’s claimed subject matter.

If the Examiner continues to reject claims 51-53 over Raz, Applicant respectfully requests the Examiner to more particularly explain how the cited portion of Raz is interpreted as disclosing the feature of:

initiating the transaction as a local transaction on the first resource manager without knowledge of whether the transaction is more appropriate to be a local transaction or a global transaction

As best understood by Applicant, the cited portions of Raz disclose what may be considered the complete opposite, initiating the transaction as a global transaction . . . without knowledge of whether the transaction is more appropriate to be a local transaction or a global transaction.

Obviousness Rejection – Raz in view of McKeehan

The obviousness rejection is based on the same premise as the anticipation rejection – that Raz discloses the feature of initiating the transaction as a local transaction . . . without knowledge of whether the transaction is more appropriate to be a local transaction or a global transaction. As discussed in great detail above, it is respectfully submitted that Raz does not, in fact, disclose (or even suggest) such a feature.

Therefore, Applicant’s comments above with respect to the anticipation rejection are incorporated herein in response to the obviousness rejection, and it is respectfully submitted that the obviousness rejection is improper and should be withdrawn for at least the reason that Raz does not disclose or suggest the “initiating local transaction” feature.

CONCLUSION

It is respectfully submitted that this application is in condition for allowance. Notice to that effect is earnestly solicited. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,
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